IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3217 of 2007

SMT.RAMESHWARI DEVI & ORS.
V/S
CIVIL JUDGE (S.D.)NAGAUR & ORS.

Mr. KC SAMDARIYA, for the appellant / petitioner

Date of Order : 26.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

Perused the impugned order.

The learned trial court has allowed the application of the plaintiff under O. 22 Rule 4 and O. 22 Rule 9 C.P.C., and has substituted the legal representatives of Sohani Devi defendant no.3.

It is contended by the learned counsel for the petitioner that the deceased had died during pendency of the suit, and the fact was brought to the notice of the plaintiff by way of application on 22.10.1999, still steps were not taken till after the matter was remanded, and therefore, the impugned order is liable to be set aside.

I have considered the submission. It has been

considered by the learned trial court that the parties went to the trial so much so that the son of Sohani Devi himself appeared in the witness box, and did not inform about the fact of death, and otherwise nobody informed, about the fact of death, and the suit was decreed way back on 30.8.93, and thereafter in the appeal application was filed contending that the suit has abated, and thereupon the learned lower Appellate Court set aside the decree, and remanded the matter with a direction that if any application is moved for substitution of legal representatives, such application shall be decided in accordance with law, and if any application is moved for setting aside abatement, that application would also be considered in accordance with law, and immediately after the remand application had been filed. It has been found by the learned trial court that there is nothing to show that the plaintiff had earlier knowledge about the death of Sohani Devi, and therefore, abatement has been set aside.

In my view, in the totality of circumstances, the impugned order is imminently just and proper, and does not require any interference in my writ jurisdiction.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/